

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

THERNELL SMITH,

Plaintiff,

-against-

9:03-CV-0955
(LEK/GHL)

JOHN BURGE, Superintendent;
JOHN ROURKE, Captain;
WILLIAM CHILSON, Sgt.; D. MYERS,
C.O.; T. CHRISTOPHER, Sgt.,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 5, 2006, by the Honorable George H. Lowe, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 24).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," Fed. R. Civ. P. 72(b), in compliance with L.R. 72.1. In the interval of at least fifteen days since the Magistrate Judge filed the subject Report-Recommendation, no objections to it have been raised. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.¹

¹ The Court notes several errors, which do not, however, impact materially upon the content of the Report-Recommendation. First, Thomas v. Irvin is incorrectly cited as Thomas v. Irving, 981 F. Supp. 794, 799, but the correct citation is Thomas v. Irvin, 981 F. Supp. 794, **798**. Report-Rec. (Dkt. No. 24) at 4. Second, Patterson v. County of Oneida is incorrectly cited as Patterson v.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 24) is **APPROVED** and
ADOPTED in its **ENTIRETY**; and it is further

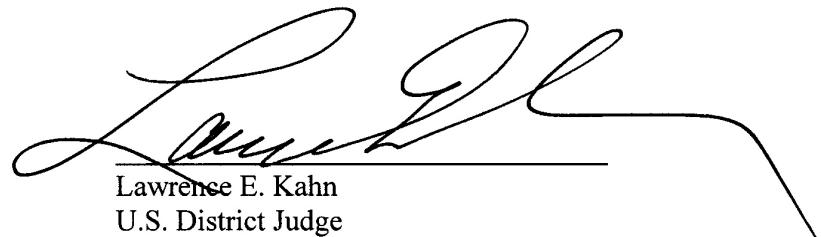
ORDERED, that Plaintiff's motion for summary judgment (Dkt. No. 17) is **DENIED**; and it
is further

ORDERED, that Defendant's motion for summary judgment (Dkt. No. 16) is **GRANTED**;
and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 28, 2006
Albany, New York



Lawrence E. Kahn
U.S. District Judge

County of Oneida, 375 F.2d 206, 219, but the correct citation is Patterson v. County of Oneida, 375 F.3d 206, 219. Report-Rec. (Dkt. No. 24) at 7 n.4. Third, Meiri v. Dacon is incorrectly cited as Meiri v. Dacon, 759 F.2d 989, 997, but the correct citation is Meiri v. Dacon, 759 F.2d 989, 998. Report-Rec. (Dkt. No. 24) at 8 n.12. Fourth, citation to Dkt. No. 21 is incorrectly cited as (Dkt. No. 21, Part 1, ¶ 5), but the correct citation should be (Dkt. No. 21, Part 1, ¶ 8). Report-Rec. (Dkt. No. 24) at 13 n.33. Fifth, Blyden v. Mancusi is incorrectly cited as Blyden v. Mancusi, 186 F.3d 252, 263, but the correct citation is Blyden v. Mancusi, 186 F.3d 252, 262. Report-Rec. (Dkt. No. 24) at 19. Sixth, Thomas v. Commonwealth of Virginia is incorrectly cited as Thomas v. Virginia, 04-CV-0273, 2005 WL 15517, at *10-11, but the correct citation is Thomas v. Commw. of Virginia, 04-CV-0273, 2005 WL 1801672, at *2-*3. Report-Rec. (Dkt. No. 24) at 36 n.88.